IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 314 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHOK BHATIA

Versus

M K GAJERA

Appearance:

Mr.S.N. Shelat, Advocate General, for the Petitioners

MR RD DAVE for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/02/2001

ORAL JUDGEMENT

1. The petitioners are the original opponents, against whom the respondent herein has filed a contempt application, being Miscellaneous Application No.4 of 1997, which is pending before the Court of Civil Judge (Senior Division), Gondal. The respondent herein was the original plaintiff in Regular Civil Suit No.108 of 1988.

The aforesaid suit was filed by the respondent for necessary declaration in the matter of entitlement of promotion and other consequential benefits on the post of D.H.O., Class I. We are not concerned with the merits of the aforesaid proceedings in this C.R.A.

2. The aforesaid suit was decreed by the trial court and the said decree was confirmed in appeal by the appellate court. Therafter, the said contempt application was filed by the present respondent on the ground that the opponents of that application have committed contempt by not giving benefit to the plaintiff which is flowing from the decree of the trial court. On the aforesaid application, even interim injunction was also prayed for, restraining the defendants from giving promotion to any one else. The trial court in the aforesaid application, which was numbered as Miscellaneous Application No.4 of 1997, issued summons on the present petitioners, meaning thereby that the trial court had prima facie taken cognizance of the proceedings under the Contempt of Courts Act. The notices were issued on 4th February, 1997, which were made returnable on 6th March, 1997.

3. The present petitioners have challenged the aforesaid order of issuing notice in the contempt proceedings by the trial court by filing this Revision Application. This Court has admitted the Revision Application and the proceedings before the trial court were stayed by this Court and today, this C.R.A. has reached for final hearing.

4. At the time of hearing of this Revision Application, it was argued by Mr.S.N. Shelat, learned Advocate General, that the trial court has no jurisdiction to initiate contempt proceedings. He further submitted that it is not a case where the trial court has initiated proceedings for the purpose of reference to the High Court. Straight away, notice to the present petitioners was issued in the said contempt proceedings. According to him, therefore, the order, on the face of it, is without jurisdiction and, therefore, under Section 115 of CPC, the order of issuance of notice can itself be set aside by this Court as the trial court could not have entertained such application since it was not having any jurisdiction so far as contempt of court is concerned. He also further submitted that the only remedy available to the plaintiff was to file execution application under Order 21 of CPC.

5. Against the aforesaid argument, Mr.Dave, for the

respondent, has submitted that since it is a show cause notice, this Court may not exercise its powers under Section 115 of CPC. He further argued that in any case, it is no doubt true that contempt powers are not available, still, the Judge can refer the matter to the High Court for taking appropriate action against the erring party.

6. After hearing Mr.Dave, I am satisfied that there was absolutely no ground for issuance of notice against the present petitioners by the trial court. The substantive contempt petition is not maintainable straight away before the trial court. Even otherwise, the only remedy available to the decree holder was to file proceedings under Order 21 of CPC. Mr.Shelat has also argued that the benefit of promotion was already given to the original decree holder by an order dated 17.10.1992 and he was given the benefit of deemed date with effect from 7.10.1988. Mr.Dave for the respondent also accepts this proposition. However, he states that the respondent should have been given deemed date from 1985 and not from 1988, as, according to him, the said benefit was available to him as per the decree passed by the trial court. However, according to me, these are points which can be taken into consideration in regular execution proceedings which are required to be filed by the decree holder under Order 21 and he should not have straight away resorted to initiation of contempt proceedings. Such proceedings, on the face of it, amount to abuse of process of law. The learned trial Judge, without verifying the aforesaid aspect, has taken cognizance by issuing notice. In contempt proceedings, even issuance of notice may have some consequences and hence, it should not have been passed so lightly. The trial court, therefore, should have been careful before issuing such notice. Since the order, on the face of it, is without jurisdiction, this Court under Section 115 of CPC, can set aside the same while exercising the revisional power. Mr.Dave also could not point out as to how such application straight away is maintainable before the trial court. Copy of the application itself shows that the decree holder straight away wanted contempt proceedings against the present petitioners for not obeying the order. There is no such prayer even in the application that any reference may be made to the High Court in this connection. Whether decree is satisfied or not, and whether benefit is required to be given from the particular date, are all questions which are required to be decided in a properly filed execution petition and not in such type of contempt petition which is filed by the decree holder. Under these circumstances, the order of

the learned Judge, issuing notice to the present petitioners in the application which was filed for contempt of court, on the face of it, is without jurisdiction and, therefore, the same is quashed and set aside. Since Miscellaneous Application No.4 of 1997 itself is not maintainable before the trial court, the same is quashed and set aside. The aforesaid application, therefore, shall stand dismissed. It is clarified that it will be open for the respondent herein to initiate appropriate execution proceedings as contemplated by Order 21 of CPC. If any such application is filed, the Executing Court may dispose of the same in accordance with law and on its own merits. The Executing Court may also take into consideration whether any stay is operating against the decree of the trial court or not. This contempt application on the face of it is not maintainable and to entertain such an application would amount to abuse of process of law. Under these circumstances, therefore, this revision application is allowed. Miscellaneous Application No.4 of 1997 filed before the Court of Civil Judge (Senior Division), Gondal is quashed and set aside and consequently, order of notice issued in the said suit is also quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

16th February, 2001 (P.B. Majmudar, J.)

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(apj)